



December 3, 2001

Ms. Leah Simon Clark  
Assistant City Attorney  
City of Waco  
P.O. Box 2570  
Waco, Texas 76702-2570

OR2001-5612

Dear Ms. Clark:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 155578.

The Waco Police Department (the “department”) received a request for “offense report #01-20007, and/or ST-3 Texas Peace Officer’s Accident Report #01-20007,” to include “all pages of this case, including arrestee information.” You inform us that the department is releasing page 1 of Offense Report No. 01-20001<sup>1</sup> and McLennan County Arrest Report No. 273500. You claim, however, that the remainder of the requested information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that subsections 552.301(a) and (b) of the Government Code provide:

(a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act’s] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

(b) The governmental body must ask for the attorney general’s decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

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<sup>1</sup>Although you state that you are releasing information pertaining to Offense Report No. 01-20001, we assume you in fact have released information pertaining to Offense Report #01-20007.

The city received the request for information on September 4, 2001. Apparently, the city attempted to submit a request for a ruling to this office on September 17, 2001, a day before the expiration of the 10-day deadline imposed by section 552.301(b). However, due to there being no postage affixed to the envelope, the city's correspondence was returned to the city on September 27, 2001 marked "Return For Postage." Subsequently, the city submitted its request to this office on September 27, 2001. Consequently, we conclude that the city failed to request a decision within the ten business day period mandated by section 552.301(a) of the Government Code. *See* Gov't Code § 552.308.<sup>2</sup> Because the request for a decision was not timely received, the requested information is presumed to be public information. Gov't Code § 552.302. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Compelling reasons exist when the information is made confidential by law or affects the interest of a third party. Open Records Decision No. 630 at 3 (1994). Section 552.103 is a permissive exception intended to protect only the interests of the governmental body. *See* Open Records Decision No. 473 (1987) (city's failure to meet 10-day deadline waived protections of section 552.103 and 552.111). Therefore, section 552.103 does not provide a compelling reason to overcome the presumption of openness.

In Open Records Decision No. 586 (1991), however, this office concluded that the need of a governmental body, other than the one that has failed to timely comply with the requirements for requesting an attorney general decision under the Public Information Act, to withhold information from disclosure may be a compelling reason to overcome the presumption that the information is public. Although you did not demonstrate the applicability of section 552.108 to the requested information within the ten-day time period prescribed by section 552.301, you inform us that the McClennan County District Attorney's Office (the "district attorney") has indicated the requested information is related to a pending

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<sup>2</sup>Section 552.308 is entitled "Timeliness of Action by United States or Interagency Mail" and provides:

(a) When this subchapter requires a request, notice, or other document to be submitted or otherwise given to a person within a specified period, the requirement is met in a timely fashion if the document is sent to the person by first class United States mail properly addressed with *postage prepaid* and:

- (1) it bears a post office cancellation mark indicating a time within that period; or
- (2) the person required to submit or otherwise give the document furnishes satisfactory proof that it was deposited in the mail within that period. [Emphasis added].

criminal prosecution. You further state that release of the information would therefore interfere with the pending prosecution. Under section 552.108(a)(1), information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime may be withheld if release of the information would interfere with the detection, investigation, or prosecution of crime. Accordingly, as it appears that the submitted information has been forwarded to the district attorney pursuant to a pending prosecution, we conclude that the release of the requested information would interfere with the prosecution of crime, and therefore, it is excepted from disclosure under section 552.108(a)(1). *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

We note, however, that information normally found on the front page of an offense report is generally considered public. *See generally* Gov't Code § 552.108(c); *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). Thus, you must release the types of information that are considered to be front page offense report information, even if this information is not actually located on the front page of the offense report. In this case, upon review of the information you state has been made available to the requestor, we conclude the city need not release any further basic information from the documents to be withheld under section 552.108(a)(1).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental

body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/seg

Ref: ID# 155578

Enc. Submitted documents

c: Mr. Geoff Keah  
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(w/o enclosures)